

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JIMMY LEROY RAMSEYER,

Petitioner,

v.

PAT GLEBE,

Respondent.

CASE NO. C13-5616 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 4), and Petitioner Jimmy Leroy Ramseyer’s (“Ramseyer”) objections to the R&R (Dkt. 5).

In 2005, Ramsayer filed a habeas corpus petition that challenged the same conviction as the one he challenges today. *See Ramseyer v. Smelser*, C05-5006 FDB. The Court denied the petition on the merits (05-5006 FDB Dkt. 49). Ramseyer’s third ground for relief in his prior petition contained a claim that his conviction violated due process because the Washington Court held that stipulated facts agreed to pursuant to Cr.R. 4.5(g) were not binding on the state at trial (05-5006 FDB Dkt. 1 at 8). On April 12, 2012, Ramseyer filed another petition raising the same ground for relief (12-5317 BHS Dkt. 5). That petition was transferred to the Ninth Circuit (12-5317 BHS Dkt. 23).

As Judge Strombom found, Ramseyer’s current petition “raises the same ground for relief.” Dkt. 4 at 1. The Court agrees with Judge Strombom’s R&R, just as the Court

1 agreed with it in Ramseyer's prior case (12-5317 BHS Dkt. 23). Thus, despite
2 Ramseyer's objection that his case was not adjudicated on the merits, as Judge Strombom
3 found, a review of his prior petitions and orders indicates otherwise. Thus, the Court
4 finds that Ramseyer's petition is a second or successive petition for which the petitioner
5 must seek authorization from the Court of Appeals before filing with the district court.
6 Dkt. 4 at 2 (*citing* 28 U.S.C. § 2244(b)(3)(A) and Ninth Circuit Rule 22-3).

7 Ramseyer's other arguments, that the Court should consider his objections (or
8 perhaps his petition) as a "Refiling of First Petition For Writ of Habeas Corpus" and that
9 equitable tolling should apply because Judge Burgess erred in adopting Judge
10 Strombom's previous R&R, are not relief which this Court can grant. Dkt. 5 at 1 and 3-4.
11 The record in Ramseyer's prior case before Judge Burgess reflects that the Ninth Circuit
12 denied his certificate of appealability (05-5006 FDB Dkt. 67) in that case.

13 The Court having considered the R&R, Petitioner's objections, and the remaining
14 record, does hereby find and order as follows:

15 (1) The R&R is **ADOPTED**;

16 (2) Ramsayer's 28 U.S.C. § 2254 petition (Dkt. 1-1) is **TRANSFERRED** to
17 the Ninth Circuit as a second or successive petition; and

18 (3) Ramseyer's motion for leave to proceed *in forma pauperis* (Dkt. 1) is
DENIED.

19 Dated this 6th day of September, 2013.

20 

21 BENJAMIN H. SETTLE
22 United States District Judge